



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
www.uspto.gov

APR 24 2003

Darby & Darby
805 Third Avenue
New York, NY 10022

Paper No. 12

In re Application of : DECISION ON PETITION
Yoshihisa Fujioka et al :
Serial No. : 09/274,197 :
Filed : March 22, 1999 :
For : Absorbent Article for Prevention of Sideward Leak :

This is a decision on petitioner's renewed request filed March 24, 2003 by which petitioners request the establishment of a new shortened statutory period for filing a reply to the Office letter dated January 24, 2002, which was a Notice of Non-Compliant Amendment. Petitioners allege that they did not receive the Office letter in question. The petition is being considered under 37 CFR 1.181, and no fee is required.

In a decision mailed January 31, 2003 in response to the first request to establish a new shortened statutory period for filing a reply to the Office letter dated January 24, 2002, petitioners were directed to section 711.03(c) of the MPEP to establish non-receipt of Office correspondence. Although the evidentiary showing set forth therein is discussed in the context of withdrawing a holding of abandonment, that evidentiary showing is acceptable under the circumstance in the instant application in which applicant is informed of the mailing of an Office action which has not been received by applicant, even though the application has not yet been held to have become abandoned. In order to overcome the presumption of delivery of an Office action, a practitioner must submit the following: (1) a statement from the practitioner stating that the Office action was not received by practitioner; (2) a statement attesting to the fact that a search of the file jacket and docket record indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received and docketed. See 1156 OG 53.

The renewed request filed March 24, 2003 includes all the above elements. The request is therefore GRANTED. Upon the mailing of this decision, the application will be forwarded to the Legal Instruments Examiner for the remailing of the Notice of Non-Compliant Amendment that was originally mailed January 24, 2002; the remailing of this Notice will establish a new shortened statutory period for response.

Summary: Notice of Non-Compliant Amendment of January 24, 2002 to be remailed setting forth new shortened statutory period for response.

John E. Kittle, Director
Groups 3730 and 3760
Phone: (703) 308-0873

ak/04/21/03